

SIGNAL OIL & GAS CO.

IBLA 71-315

Decided October 5, 1972

Appeals from decisions by the Montana land office (Mont. 18279, etc.) rejecting oil and gas lease offers.

Set aside and remanded.

Act of October 2, 1968 (Wildlife Scenic Rivers Act)--Statutory Construction: Legislative History

Lands which constitute the bed or bank or are situated within a quarter mile of any river listed in Sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river system are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject to

Lands constituting the bed or bank or within a quarter mile of a river which is listed as a potential addition to the national wild and scenic system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

APPEARANCES: Fred Immergluck, attorney-at-law for appellant.

OPINION BY MR. RITVO

Signal Oil & Gas Company has appealed to the Secretary of the Interior from several decisions by the Montana land office dated May 17, 1971, rejecting a series of oil and gas lease offers on the ground that the lands were inadvertently listed and should have been withheld pending legislation implementing the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906, 16 U.S.C. § 1271 et seq.).

On April 26, 1971, Signal Oil filed oil and gas lease offers for numerous parcels of land in Montana pursuant to the terms of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq. as amended, or the Acquired Lands Mineral Leasing Act of August 7, 1947, as amended, 30 U.S.C. § 351 et seq. The lands, among others,

had been posted in the land office as available for oil and gas filing in accordance with the provision of the regulation governing the disposition of lands becoming available for leasing as a result of the termination, cancellation, expiration or relinquishment of leases. 43 CFR subpart 3112. The application covered in whole or in part lands which constitute the bed or bank of the Missouri River, or are within one-quarter mile of the river. Section 5(a)(13) of the Wild and Scenic Rivers Act, supra § 1276(a)(13), designated a portion of the Missouri River in Montana as a potential addition to the national wild and scenic rivers system. The lands applied for are situated within this portion of the Missouri River. The Land Office stated:

Section 8(b) of the Wild and Scenic River Act withdraws from the operation of the public land laws all public lands which constitute the bed or bank, or are within 1/4 mile of any river listed for study for potential addition to the Wild River System.

It then concluded that these lands were not available for leasing insofar as they covered such lands. Signal Oil filed a notice of appeal on June 15, 1971.

On appeal, Signal argues that section 8(b), supra, withdraws the lands applied for from disposition under the public land laws, but points out that it is section 9(b) which governs the application of the mineral leasing laws to the rejected lands. Its position is well taken.

Section 9(b) provides:

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the period specified in section 1278(b) of this title. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. (emphasis added).

It is plain that the Act does not proscribe oil and gas leasing of lands within a potential addition to the Wild and Scenic River system. Therefore, unless there is some other reason which has not been called to our attention, the lands applied for are available for oil and gas leasing.

However, the fact that lands are available for leasing does not require that they be leased. The Secretary of the Interior, or his delegate, can exercise discretion in determining whether or not public lands should be leased. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). He may refuse to issue a lease even though the lands were open to filing at the time the offers were filed. Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 388 U.S. 912 (1966). That the offer earned first priority as a result of a drawing does not preclude a later exercise of discretion to decline to lease. Schraier v. Hickel, supra, 666, 667.

We cannot ascertain from the Land Office decision whether the offers were rejected because the Land Office believed, incorrectly, that the lands were not available for leasing or because it sought, properly, to exercise its discretion and withhold them from leasing. While we recognize that a refusal to lease the lands applied for may well be justified in the circumstances, we feel that the offers should be reconsidered by the Land Office to clarify the basis for its action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Land Office is set aside and the case is remanded for further proceedings consistent herewith.

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Martin Ritvo, Member

We concur:

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Edward W. Stuebing, Member

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Joseph Goss, Member

